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10 Attorneys for Plaintiff
UNITED STATES OF AMERICA

11 UNITED STATES DISTRICT COURT

12 FOR THE CENTRAL DISTRICT OF CALIFORNIA

13 UNITED STATES OF AMERICA,

No. CR 15-00595-RGK

14 Plaintiff,

SUR-REPLY IN SUPPORT OF THE
GOVERNMENT'S OPPOSITION TO
DEFENDANT'S MOTION *IN LIMINE* TO
EXCLUDE EXPERT TESTIMONY

15 v.

16 ANGELO HARPER JR.,

Trial Date: July 19, 2016
Trial Time: 9:00 a.m.
Location: Courtroom of the
Hon. R. GARY
KLAUSNER

17 Defendant.

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1 Defendant argues that expert testimony from David Jones and lay
2 testimony from Special Agent Patrick McCall should be excluded. That
3 argument fails for multiple reasons, which are detailed in the
4 government's Opposition Brief. The Government submits this Sur-Reply
5 for the limited purpose of informing the Court that on July 18, 2016,
6 the Government provided defendant's counsel with a supplemental
7 disclosure of testimony that it expects Mr. Jones to offer at trial.
8 (See attached Declaration of George E. Pence ("Pence Decl.") ¶ 2 &
9 Ex. A.).

10 Contrary to defendant's argument, the government's June 29,
11 2016, notice of Mr. Jones' testimony more than satisfies the notice
12 requirements set forth in Federal Rule of Criminal Procedure
13 16(a)(1)(G). Moreover, the supplemental disclosure cures any
14 purported deficiency. The supplemental disclosure identifies the
15 specific images and video that will be the subject matter of Mr.
16 Jones' testimony. In addition, that supplemental disclosure further
17 states:

18 The government anticipates that Mr. Jones will testify that he
19 viewed these exhibits and that he did not observe any of the
20 typical signs of digital manipulation, such as digital "noise,"
21 unnatural and/or mismatched lighting, and blurred or otherwise
22 distorted skin tones. The government also anticipates that Mr.
23 Jones will testify that the production of computer-generated
24 images that are sufficiently realistic to deceive him would be
25 extremely costly and require access to state-of-the-art
26 technology. Consequently, the government expects Mr. Jones to
27 opine that the exhibits he reviewed depict actual persons and
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are not the result of compositing, morphing, or computer generation.

(Pence Decl. ¶ 2 & Ex. A.)

The government thus respectfully requests that defendant's

Motion in Limine to Exclude Expert Testimony be denied.

Dated: July 18, 2016

Respectfully submitted,

EILEEN M. DECKER
United States Attorney

LAWRENCE S. MIDDLETON
Assistant United States Attorney
Chief, Criminal Division

/s/

GEORGE E. PENCE
A. CARLEY PALMER
Assistant United States Attorneys

Attorneys for Plaintiff
UNITED STATES OF AMERICA

DECLARATION OF GEORGE E. PENCE

I, GEORGE E. PENCE, declare as follows:

1. I am an Assistant United States Attorney and trial counsel for the government in United States v Angelo Harper Jr., CR 15-00595-RGK. I have knowledge of the facts set forth herein and could and would testify to those facts fully and truthfully if called and sworn as a witness.

2. At 12:17 p.m. (PST) on July 18, 2016, I sent a letter to counsel for defendant that provides supplemental notice of the testimony that the government anticipates eliciting from David Jones at trial. A true and correct copy of that letter is attached hereto as **Exhibit A**.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that this declaration is executed at Los Angeles, California, on July 18, 2016.

~~GEORGE E. PENCE~~

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EXHIBIT A



United States Department of Justice

United States Attorney's Office Central District of California

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1200 United States Courthouse
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July 18, 2016

VIA E-MAIL

Rachel Alexandra Rossi
Deputy Federal Public Defender
321 East 2nd Street
Los Angeles, CA 90012-4202
Email: Rachel_Rossi@fd.org

Re: United States v. Harper,
CR No. 15-595-RGK

Dear Counsel:

On June 29, 2016, the government provided you notice pursuant to Rule 16(a)(1)(G) of the Federal Rules of Criminal Procedure of the anticipated expert testimony of David Jones under Federal Rules of Evidence 702, 703, or 705. Although the June 29, 2016, notice sufficiently summarizes Mr. Jones' anticipated testimony under Rule 16, including any opinions he may offer, the government, after meeting with Mr. Jones, hereby supplements its disclosure as follows:

David Jones is expected to testify in general about digitally-created and manipulated computer images, including composite images, morphed images, and computer generated images. More specifically, he is expected to testify that he has viewed the following exhibits evidencing child pornography found on defendant's digital devices, which exhibits the government has made available to you for inspection and shown to you at the offices of the United States Attorney for the Central District of California:

- Clip (0:00–1:47) from SA McCall's iPad video file of the Kik #NEPILOVERS chatroom (unredacted);
- CD containing SA McCall's iPad video file of the Kik #NEPILOVERS chatroom (unredacted);
- Screenshots from child pornography video file (0:00; 2:00) posted by defendant to #NEPILOVERS chatroom on October 7, 2015 at 9:46 p.m. (redacted);
- Clips (0:24-0:29; 4:00-4:03) from child pornography video file posted by defendant to #NEPILOVERS chatroom on October 7, 2015 at 9:46 p.m. (unredacted);
- CD containing child pornography video file posted by defendant to #NEPILOVERS chatroom on October 7, 2015 at 9:46 p.m. (unredacted);

Rossi
RE: U.S. v. Harper, 15-595-RGK
July 18, 2016
Page 2

- CD containing three child pornography image files found on defendant's iPhone (unredacted);
- Clip (1:09-1:14) from child pornography video file found on defendant's HTC EVO Shift memory card (unredacted); and
- CD with child pornography video file found on defendant's HTC EVO Shift memory card (unredacted).

The government anticipates that Mr. Jones will testify that he viewed these exhibits and that he did not observe any of the typical signs of digital manipulation, such as digital "noise," unnatural and/or mismatched lighting, and blurred or otherwise distorted skin tones. The government also anticipates that Mr. Jones will testify that the production of computer-generated images that are sufficiently realistic to deceive him would be extremely costly and require access to state-of-the art technology. Consequently, the government expects Mr. Jones to opine that the exhibits he reviewed depict actual persons and are not the result of compositing, morphing, or computer generation.

Mr. Jones' opinion regarding digitally-created and manipulated computer images is based on his specialized training in such technology and his experience working in computer animated graphics. The government has already produced to you Mr. Jones curriculum vitae, which contains his qualifications. Mr. Jones charges \$500/hour for his services. He has not prepared any reports, but if he does so, we will forward them to you as well.

Very truly yours,

/s/

George E. Pence
Assistant United States Attorney
General Crimes Section